CR No. 3285 of 2006

Sukhwinder Singh and another

Versus

Sukhdev Singh and others

Present: Mr. Gurcharan Dass, Advocate with
Mr. SK Bawa, Advocate, for the
for the petitioner.

Mr.Vikas Sagar, Advocate,
for the respondents.

MAHESH GROVER, J. (Oral)

The petitioners have filed the present petition impugning the order dated 16th May, 2006. The plaintiffs-respondents filed a suit for the declaration to the effect that they are the owners in possession of the suit land. During the course of the proceedings, the evidence of the respondents/plaintiffs was recorded. As far as the evidence of the petitioners is concerned, the same is yet to commence.

The petitioners moved an application for amendment of their written statement to incorporate the following preliminary objections:-

"That the plaintiff earlier filed civl suit No. 53 of 22.1.1993 on

> the same cause of action and the said suit was got dismissed by the plaintiffs on 7.4.1993 from the court of Sh. N.K.Gaur the then Sub Judge II, Class Ludhiana, the present suit is, therefore, barred under section 12 read with order 9 rule 9 C.P.C. The certified copy of the amended plaint as well as the copy of the order are attached."

This was opposed by the respondents who stated that the provisions of Order 6 Rule 17 of the Code of Civil Procedure cannot be invoked as the fact of the earlier litigation was in the knowledge of the petitioners which is reflected from the fact that a specific question was put to PW.4 during the recording of his evidence and the amendment which is sought to be made in the written statement is, therefore, not bonafide.

Mr. Gurcharan Dass, learned counsel for the petitioners contended that the petitioners have only sought to incorporate a preliminary objection in their written statement and that the only evidence that they would tender in evidence is the judgment of the civil court passed in the earlier suit filed by the respondents and, as such, no prejudice is likely to be caused to the petitioners either on account of the delay or otherwise. In support of his contention he relied upon the judgment of the Apex Court

reported as 2006 (2) R.C.R. (Civil) 577 Rajesh Kumar Aggarwal and others Versus K.K.Modi and others and a judgment of this Court reported as 2006 (1) Law Herald (P&H) 442 Harbheg Singh and another Versus Darshan Ram and others.

Some of the observations of the Apex Court made in Rajesh Kumar Aggarwal (supra) pertaining to the allowing of an application under Order 6 Rule 17 of the Code of Civil Procedure are as follows:-

> "Order 6 Rule 17 of CPC reads thus:-
>
> "17) Amendment of pleadings- The court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real question in controversy between the parties:
>
> Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial."
>
> This rule declares that the Court may, at any stage of the

proceedings, allow either party to alter or amend his pleadings in such a manner and on such terms as may be just. It also states that such amendments should be necessary for the purpose of determining the real question in controversy between the parties. The proviso enacts that no application for amendment should be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter for which amendment is sought before the commencement of the trial."

This Court in Harbheg Singh's case (supra) has observed as follows:-

"Civil Procedure Code, 1908, Section 96, Order 6 Rule 7-Lower Appellate Court dismissing the application seeking amendment of the written statement during pendency of appeal, filed by petitioner-During course of evidence it transpired that defendant No.5 Smt. Baksho had filed a Civil Suit wherein she had set up a Will dated 30.7.1978 executed in her favour of Chaman Lal, her husband-Legal and valid Will-Introduction thereof by way of amendment-Amendment is necessary for

effective adjudication-Revision petition allowed inter alia on the following grounds:

i) Courts are more liberal in allowing amendments of written statement as the question of prejudice is unlikely to arise in that event.

ii) Ordinarily the amendment in the pleadings are not likely to cause failure of justice or irreparable injury on any part.

iii) The Will dated 30.7.1986 would be necessary for effective adjudication of two issues involved as the plaintiff-respondents Nos. 1 to 4 have sought cancellation of sale deeds-The issue with regard to partition is also likely to be influenced either way by the Will.

iv) Amendment is allowed on payment of Rs. 5000/- as cost.

v) The other parties would be entitled to corresponding right of filing their pleadings in accordance with law."

After hearing learned counsel for the petitioners and perusing

the record, this Court is of the opinion that the amendment of the written statement which is sought to be incorporated by the petitioners is not likely to cause prejudice to the case of the respondents in the facts and circumstances of the case. The cardinal rule is to see as to whether the amendment sought is likely to enhance the cause of justice and is likely to help the Court to arrive at just and proper decision and as to whether the amendment is likely to prejudice the case of the other side or not. The amendment sought by the petitioners is only with regard to earlier litigation which seems to be within the parameters of the provisions of Order 6 Rule 17 of the Code of Civil Procedure.

In view of this, the petition is allowed and the impugned judgment dated 16th May, 2006 is set aside and the amendment as sought by the petitioners in their written statement shall be allowed subject to payment of Rs. 5,000/- as costs. The respondents' right to incorporate corresponding pleadings in response to the amendment shall obviously be not denied to him. Any evidence they wishes to produce shall be produced in rebuttal.

22.8.2006 **(MAHESH GROVER)**
prem **JUDGE**